



February 25, 2014

ENGROSSED SENATE BILL No. 273

DIGEST OF SB 273 (Updated February 25, 2014 12:58 pm - DI 87)

Citations Affected: IC 36-4; noncode.

Synopsis: Approval of annexation agreements. Establishes requirements for an agreement executed and recorded after June 30, 2014, between a municipality and owners of real property, if all or part of the consideration for the agreement is that the owners agree to the annexation of their property or agree not to remonstrate or withdraw a remonstrance against an annexation by the municipality. Amends a provision that allows 100% of owners of land to file a petition requesting annexation as follows: (1) Allows owners of noncontiguous property to petition for annexation. (2) Removes the requirement that the landowners reside within the annexation territory. With certain exceptions, places a moratorium on annexations from April 1, 2014, to July 1, 2015. Requires a court with regard to a remonstrance filed after March 31, 2014, and before July 1, 2015, to award attorney's fees and expenses to the signers of the remonstrance. Urges the legislative council to assign annexation topics to an interim committee for study during the 2014 legislative interim.

Effective: Upon passage; July 1, 2014.

Buck, Crider, Boots

(HOUSE SPONSORS — CHERRY, VANNATTER)

January 13, 2014, read first time and referred to Committee on Local Government.
January 16, 2014, reported favorably — Do Pass.
January 21, 2014, read second time, ordered engrossed; returned to second reading.
January 27, 2014, re-read second time, amended, ordered engrossed.
January 28, 2014, engrossed. Read third time, passed. Yeas 43, nays 6.

HOUSE ACTION

February 4, 2014, read first time and referred to Committee on Government and Regulatory Reform.
February 25, 2014, amended, reported — Do Pass.

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February 25, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 273

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-4-3-5.1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.1. (a) This
3 section applies to an annexation in which **one hundred percent**
4 **(100%) of the** owners of land located outside but contiguous to a
5 municipality file a petition with the legislative body of the
6 municipality.

7 **(b) This section applies to an annexation in which one hundred**
8 **percent (100%) of the owners of land located outside of but not**
9 **contiguous to a municipality files a petition before July 1, 2015,**
10 **with the legislative body of the municipality**

11 (+) requesting an ordinance annexing the area described in the
12 petition. ~~and~~

13 (2) ~~signed by one hundred percent (100%) of the landowners that~~
14 ~~reside within the territory that is proposed to be annexed.~~

15 (+) (c) Sections 2.1 and 2.2 of this chapter do not apply to an
16 annexation under this section.

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1 ~~(e)~~ (d) The petition circulated by the landowners must include on
 2 each page where signatures are affixed a heading that is substantially
 3 similar to the following:

4 "PETITION FOR ANNEXATION INTO THE (insert whether city
 5 or town) OF (insert name of city or town).".

6 ~~(d)~~ (e) The municipality may:

7 (1) adopt an annexation ordinance annexing the territory; and

8 (2) adopt a fiscal plan and establish a definite policy by resolution
 9 of the legislative body;

10 after the legislative body has held a public hearing on the proposed
 11 annexation.

12 ~~(e)~~ (f) The municipality may introduce and hold the public hearing
 13 on the annexation ordinance not later than thirty (30) days after the
 14 petition is filed with the legislative body. Notice of the public hearing
 15 may be published one (1) time in accordance with IC 5-3-1 at least
 16 twenty (20) days before the hearing. All interested parties must have
 17 the opportunity to testify at the hearing as to the proposed annexation.

18 ~~(f)~~ (g) The municipality may adopt the annexation ordinance not
 19 earlier than fourteen (14) days after the public hearing under subsection
 20 ~~(e)~~: (f).

21 ~~(g)~~ (h) A landowner may withdraw the landowner's signature from
 22 the petition not more than thirteen (13) days after the municipality
 23 adopts the fiscal plan by providing written notice to the office of the
 24 clerk of the municipality. If a landowner withdraws the landowner's
 25 signature, the petition shall automatically be considered a voluntary
 26 petition that is filed with the legislative body under section 5 of this
 27 chapter, fourteen (14) days after the date the fiscal plan is adopted. All
 28 provisions applicable to a petition initiated under section 5 of this
 29 chapter apply to the petition.

30 ~~(h)~~ (i) If the municipality does not adopt an annexation ordinance
 31 within sixty (60) days after the landowners file the petition with the
 32 legislative body, the landowners may file a duplicate petition with the
 33 circuit or superior court of a county in which the territory is located.
 34 The court shall determine whether the annexation shall take place as
 35 set forth in section 5 of this chapter.

36 ~~(i)~~ (j) A remonstrance under section 11 of this chapter may not be
 37 filed. However, an appeal under section 15.5 of this chapter may be
 38 filed.

39 ~~(j)~~ (k) In the absence of an appeal under section 15.5 of this chapter,
 40 an annexation ordinance adopted under this section takes effect not less
 41 than thirty (30) days after the adoption of the ordinance and upon the
 42 filing and recording of the ordinance under section 22 of this chapter.



SECTION 2. IC 36-4-3-11, AS AMENDED BY P.L.111-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) Except as provided in section ~~5.1(i)~~ **5.1(j)** of this chapter and subsections (d) and (e), whenever territory is annexed by a municipality under this chapter, the annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by:

- (1) at least sixty-five percent (65%) of the owners of land in the annexed territory; or
- (2) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory.

The remonstrance must be filed within ninety (90) days after the publication of the annexation ordinance under section 7 of this chapter, must be accompanied by a copy of that ordinance, and must state the reason why the annexation should not take place. **After June 30, 2014, the remonstrance may specify the person or persons who have been appointed by the remonstrators for purposes of section 21.5(c)(2)(B) of this chapter. After June 30, 2014, the remonstrance may be amended as necessary if there is a change in the person or persons who have been appointed by the remonstrators for purposes of section 21.5(c)(2)(B) of this chapter.**

(b) On receipt of the remonstrance, the court shall determine whether the remonstrance has the necessary signatures. In determining the total number of landowners of the annexed territory and whether signers of the remonstrance are landowners, the names appearing on the tax duplicate for that territory constitute prima facie evidence of ownership. Only one (1) person having an interest in each single property, as evidenced by the tax duplicate, is considered a landowner for purposes of this section.

(c) If the court determines that the remonstrance is sufficient, it shall fix a time, within sixty (60) days of its determination, for a hearing on the remonstrance. Notice of the proceedings, in the form of a summons, shall be served on the annexing municipality. The municipality is the defendant in the cause and shall appear and answer.

(d) If an annexation is initiated by property owners under section 5.1 of this chapter and all property owners within the area to be annexed petition the municipality to be annexed, a remonstrance to the annexation may not be filed under this section.

(e) This subsection applies if:

- (1) the territory to be annexed consists of not more than one hundred (100) parcels; and



(2) eighty percent (80%) of the boundary of the territory proposed to be annexed is contiguous to the municipality.

An annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by at least seventy-five percent (75%) of the owners of land in the annexed territory as determined under subsection (b).

SECTION 3. IC 36-4-3-11.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.1. (a) This section applies to a remonstrance filed after March 31, 2014.**

(b) If the court determines under section 11 of this chapter that a sufficient remonstrance has been filed, the court shall allow the signers of the remonstrance the signer's expenses incurred in filing the remonstrance, including reasonable attorney's fees, in an amount not to exceed forty thousand dollars (\$40,000).

(c) This section expires July 1, 2015.

SECTION 4. IC 36-4-3-11.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.2. (a) Except as provided in subsections (b) and (c), a municipality may not annex contiguous territory under this chapter unless the municipal legislative body has, before April 1, 2014:**

(1) introduced an annexation ordinance; and

(2) adopted a resolution adopting a fiscal plan and establishing a definite policy;

for the territory proposed to be annexed.

(b) This section does not prohibit an annexation:

(1) of noncontiguous property under IC 36-4-3-4; or

(2) for which a sufficient petition has been filed with the municipal legislative body under section 5 or 5.1 of this chapter requesting the adoption of an ordinance annexing the area.

(c) This section does not prohibit an annexation of property that a municipal legislative body finds and determines in writing is necessary for economic development within the municipality.

(d) A fiscal plan described in subsection (a)(2) may be amended one (1) time before the adoption of an annexation ordinance described in subsection (a)(1).

(e) The amendment provided in subsection (d) would not include an amendment for a clerical error or to add an omission.

(f) This section expires July 1, 2015.



SECTION 5. IC 36-4-3-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 21.5. (a) This section applies only to an agreement executed and recorded after June 30, 2014. This section does not apply to a contract under IC 36-9-22.**

(b) This section applies to an agreement between a municipality and owners of real property, if all or part of the consideration for the agreement is that the owners of the real property agree to:

(1) the annexation of the owners' real property by the municipality; or

(2) not remonstrate or withdraw a remonstrance against the annexation of the owners' real property by the municipality.

(c) In order to be valid, an agreement must meet the following requirements:

(1) The agreement must be recorded with the county recorder of the county where the municipality is located:

(A) after the agreement is executed as required under this section; and

(B) if a remonstrance has been filed under section 11 of this chapter, after the agreement is approved by the court in which the remonstrance was filed.

(2) The agreement must be signed by:

(A) the owners of real property who are parties to the agreement; or

(B) at least two (2) representatives of the owners of real property who are parties to the agreement, including at least one (1) representative who:

(i) is appointed from among the owners of real property who are parties to the agreement; and

(ii) is named as a representative in the remonstrance as provided in section 11(a) of this chapter or is otherwise named as a representative in a petition or motion filed with the court;

as of the date the agreement is recorded under subdivision (1).

The date each signature was made must be written next to the signature.

SECTION 6. [EFFECTIVE UPON PASSAGE] **(a) The general assembly urges the legislative council to assign to an interim study committee for study during the 2014 legislative interim the following topics concerning annexation:**

(1) Reasons for annexation.

(2) Contiguity requirements.



- 1 **(3) Involuntary annexation.**
- 2 **(4) Litigation costs associated with annexation.**
- 3 **(5) Economic development requirements for annexation.**
- 4 **(6) Remonstrance process.**
- 5 **(7) Mandatory annexation for extension of municipal services.**
- 6 **(8) Contracts for payments in lieu of annexation**
- 7 **(9) Extraterritorial service disputes.**
- 8 **(10) Any other topic the committee determines to be**
- 9 **necessary.**
- 10 **(b) If an interim study committee is assigned the topic described**
- 11 **in subsection (a), the committee shall issue to the legislative council**
- 12 **a final report containing the committee's findings and**
- 13 **recommendations, including any recommended legislation**
- 14 **concerning the topic, in an electronic format under IC 5-14-6 not**
- 15 **later than November 1, 2014.**
- 16 **(c) This SECTION expires December 31, 2014.**
- 17 **SECTION 7. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 273, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 273 as introduced.)

Committee Vote: Yeas 8, Nays 0

Senator Head, Chairperson

SENATE MOTION

Madam President: I move that Engrossed Senate Bill 273, which is eligible for third reading, be returned to second reading for purposes of amendment.

BUCK

SENATE MOTION

Madam President: I move that Senate Bill 273 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 36-4-3-11, AS AMENDED BY P.L.111-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2014]: Sec. 11. (a) Except as provided in section 5.1(i) of this chapter and subsections (d) and (e), whenever territory is annexed by a municipality under this chapter, the annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by:

- (1) at least sixty-five percent (65%) of the owners of land in the annexed territory; or
- (2) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory.

The remonstrance must be filed within ninety (90) days after the

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publication of the annexation ordinance under section 7 of this chapter, must be accompanied by a copy of that ordinance, and must state the reason why the annexation should not take place. **The remonstrance may specify the person or persons who have been appointed by the remonstrators for purposes of section 21.5(c)(2)(B) of this chapter. The remonstrance may be amended as necessary if there is a change in the person or persons who have been appointed by the remonstrators for purposes of section 21.5(c)(2)(B) of this chapter.**

(b) On receipt of the remonstrance, the court shall determine whether the remonstrance has the necessary signatures. In determining the total number of landowners of the annexed territory and whether signers of the remonstrance are landowners, the names appearing on the tax duplicate for that territory constitute prima facie evidence of ownership. Only one (1) person having an interest in each single property, as evidenced by the tax duplicate, is considered a landowner for purposes of this section.

(c) If the court determines that the remonstrance is sufficient, it shall fix a time, within sixty (60) days of its determination, for a hearing on the remonstrance. Notice of the proceedings, in the form of a summons, shall be served on the annexing municipality. The municipality is the defendant in the cause and shall appear and answer.

(d) If an annexation is initiated by property owners under section 5.1 of this chapter and all property owners within the area to be annexed petition the municipality to be annexed, a remonstrance to the annexation may not be filed under this section.

(e) This subsection applies if:

- (1) the territory to be annexed consists of not more than one hundred (100) parcels; and
- (2) eighty percent (80%) of the boundary of the territory proposed to be annexed is contiguous to the municipality.

An annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by at least seventy-five percent (75%) of the owners of land in the annexed territory as determined under subsection (b)."

Page 1, line 4, after "2014." insert **"This section does not apply to a contract under IC 36-9-22."**

Page 2, delete lines 8 through 9, begin a new line double block indented and insert:

"(B) at least two (2) representatives of the owners of real



property who are parties to the agreement, including at least one (1) representative who:

- (i) is appointed from among the owners of real property who are parties to the agreement; and**
- (ii) is named as a representative in the remonstrance as provided in section 11(a) of this chapter or is otherwise named as a representative in a petition or motion filed with the court."**

Renumber all SECTIONS consecutively.

(Reference is to SB 273 as printed January 17, 2014.)

BUCK

COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 273, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 36-4-3-5.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.1. (a) This section applies to an annexation in which **one hundred percent (100%) of the** owners of land located outside but contiguous to a municipality file a petition with the legislative body of the municipality.

(b) This section applies to an annexation in which one hundred percent (100%) of the owners of land located outside of but not contiguous to a municipality files a petition before July 1, 2015, with the legislative body of the municipality

(+) requesting an ordinance annexing the area described in the petition. ~~and~~

(2) signed by one hundred percent (100%) of the landowners that reside within the territory that is proposed to be annexed.

~~(b)~~ **(c)** Sections 2.1 and 2.2 of this chapter do not apply to an annexation under this section.

~~(c)~~ **(d)** The petition circulated by the landowners must include on each page where signatures are affixed a heading that is substantially similar to the following:

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"PETITION FOR ANNEXATION INTO THE (insert whether city or town) OF (insert name of city or town).".

~~(d)~~ (e) The municipality may:

- (1) adopt an annexation ordinance annexing the territory; and
- (2) adopt a fiscal plan and establish a definite policy by resolution of the legislative body;

after the legislative body has held a public hearing on the proposed annexation.

~~(e)~~ (f) The municipality may introduce and hold the public hearing on the annexation ordinance not later than thirty (30) days after the petition is filed with the legislative body. Notice of the public hearing may be published one (1) time in accordance with IC 5-3-1 at least twenty (20) days before the hearing. All interested parties must have the opportunity to testify at the hearing as to the proposed annexation.

~~(f)~~ (g) The municipality may adopt the annexation ordinance not earlier than fourteen (14) days after the public hearing under subsection ~~(e)~~: (f).

~~(g)~~ (h) A landowner may withdraw the landowner's signature from the petition not more than thirteen (13) days after the municipality adopts the fiscal plan by providing written notice to the office of the clerk of the municipality. If a landowner withdraws the landowner's signature, the petition shall automatically be considered a voluntary petition that is filed with the legislative body under section 5 of this chapter, fourteen (14) days after the date the fiscal plan is adopted. All provisions applicable to a petition initiated under section 5 of this chapter apply to the petition.

~~(h)~~ (i) If the municipality does not adopt an annexation ordinance within sixty (60) days after the landowners file the petition with the legislative body, the landowners may file a duplicate petition with the circuit or superior court of a county in which the territory is located. The court shall determine whether the annexation shall take place as set forth in section 5 of this chapter.

~~(i)~~ (j) A remonstrance under section 11 of this chapter may not be filed. However, an appeal under section 15.5 of this chapter may be filed.

~~(j)~~ (k) In the absence of an appeal under section 15.5 of this chapter, an annexation ordinance adopted under this section takes effect not less than thirty (30) days after the adoption of the ordinance and upon the filing and recording of the ordinance under section 22 of this chapter."

Page 1, line 3, delete "JULY 1, 2014]:" and insert "UPON PASSAGE]:".

Page 1, line 3, strike "5.1(i)" and insert "5.1(j)".



Page 1, line 15, delete "The" and insert "**After June 30, 2014, the**".

Page 2, line 2, delete "The" and insert "**After June 30, 2014, the**".

Page 2, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 4. IC 36-4-3-11.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.1. (a) This section applies to a remonstrance filed after March 31, 2014.**

(b) If the court determines under section 11 of this chapter that a sufficient remonstrance has been filed, the court shall allow the signers of the remonstrance the signer's expenses incurred in filing the remonstrance, including reasonable attorney's fees, in an amount not to exceed forty thousand dollars (\$40,000).

(c) This section expires July 1, 2015.

SECTION 5. IC 36-4-3-11.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.2. (a) Except as provided in subsections (b) and (c), a municipality may not annex contiguous territory under this chapter unless the municipal legislative body has, before April 1, 2014:**

(1) introduced an annexation ordinance; and

(2) adopted a resolution adopting a fiscal plan and establishing a definite policy;

for the territory proposed to be annexed.

(b) This section does not prohibit an annexation:

(1) of noncontiguous property under IC 36-4-3-4; or

(2) for which a sufficient petition has been filed with the municipal legislative body under section 5 or 5.1 of this chapter requesting the adoption of an ordinance annexing the area.

(c) This section does not prohibit an annexation of property that a municipal legislative body finds and determines in writing is necessary for economic development within the municipality.

(d) A fiscal plan described in subsection (a)(2) may be amended one (1) time before the adoption of an annexation ordinance described in subsection (a)(1).

(e) The amendment provided in subsection (d) would not include an amendment for a clerical error or to add an omission.

(f) This section expires July 1, 2015."

Page 3, after line 25, begin a new paragraph and insert:

"SECTION 7. [EFFECTIVE UPON PASSAGE] **(a) The general assembly urges the legislative council to assign to an interim study committee for study during the 2014 legislative interim the**



following topics concerning annexation:

- (1) Reasons for annexation.**
- (2) Contiguity requirements.**
- (3) Involuntary annexation.**
- (4) Litigation costs associated with annexation.**
- (5) Economic development requirements for annexation.**
- (6) Remonstrance process.**
- (7) Mandatory annexation for extension of municipal services.**
- (8) Contracts for payments in lieu of annexation**
- (9) Extraterritorial service disputes.**
- (10) Any other topic the committee determines to be necessary.**

(b) If an interim study committee is assigned the topic described in subsection (a), the committee shall issue to the legislative council a final report containing the committee's findings and recommendations, including any recommended legislation concerning the topic, in an electronic format under IC 5-14-6 not later than November 1, 2014.

(c) This SECTION expires December 31, 2014.

SECTION 8. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 273 as reprinted January 28, 2014.)

MAHAN, Chair

Committee Vote: yeas 12, nays 0.

